

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



JAN 28 2003

In the Matter of)
)
Amendment of Section 73.622(b)) MM Docket No. 01-244
Table of Allotments,) RM-10234
Digital Television Broadcast Stations.)
(Tyler, Texas))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
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Amendment of Section 73.622(b)) MM Docket No. 01-245
Table of Allotments,) RM-10235
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(Lufkin, Texas))

To: Video Division
Media Bureau

**OPPOSITION OF CIVCO, INC.
TO PETITION FOR RECONSIDERATION OF ORDER DENYING STAY**

CivCo, Inc. ("CivCo"), permittee of stations KLTU-DT (Tyler, Texas) and KTRE-DT (Lufkin, Texas), by its attorneys, hereby files its opposition to the Petition for Reconsideration filed January 21, 2003 by International Broadcasting Network ("IBN") in connection with the *Order Denying Petition for Stay* adopted by the Commission on December 20, 2002.¹ In its petition for stay, IBN requested a stay of the effective date of the Commission's action granting CivCo's proposed substitution of assigned DTV allotments for the above stations.²

¹ Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Order Denying Petition for Stay*, MM Docket Nos 01-244 and 01-245, DA 02-3468 (rel. Dec. 20, 2002) ("Order").

² Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Report and Order*, MM Docket Nos. 01-244 and 01-

In seeking reconsideration, IBN argues that the Commission applied an incorrect standard for evaluating its request for stay. IBN claims that Section 1.102(b)(2) of the Commission's rules³ was the proper standard for staying an administrative action.⁴ The rule IBN cites, however, simply states that the Commission has discretion to issue a stay. In the *Order*, the Commission cites and applies the proper standard that governs the agency's discretion.⁵ Thus, IBN raises no issue in its Petition that warrants reconsideration of the Commission's decision.

The Commission continues to reaffirm that low power stations are secondary to full power stations and must not cause interference to existing or new full-service stations.⁶ IBN's low power stations KIBN-LP and KLCV-LP are not Class A-eligible facilities and therefore are not entitled to protection against the Commission's decision to amend the DTV Table of Allotments. Moreover, as the Commission sets forth in its *Order*, CivCo's channel substitutions facilitate the implementation of DTV service to its communities of license, and issuance of a stay would cause unnecessary harm and delay to both CivCo and those communities.⁷

245, KM- 10234 and 10235 (rel. October 9, 2002). In the *Report and Order*, the Commission adopted Civic's request for the substitution of DTV channel 10 for station KLTW(TV)'s assigned DTV channel 38 at Tyler, Texas and of DTV channel 11 for station KTRE(TV)'s assigned DTV channel 43 at Lufkin.

47 C.F.R. § 73.102(b)(2) (2002)

⁴ See Petition at 2

Order, ¶ 3 (citing *Virginia Petroleum Jobbers v. Fed'l Power Commission*, 259 F.2d 921 (D.C. Cir. 1958)).

See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), *Report and Order*, MM Docket Nos. 01-244 and 01-245, KM-10234 and 10235, ¶ 7 (rel. Oct. 9, 2002) ("IBN's low power stations, KIBN and KLCV, are simply not entitled to protection."). See also *Order*, ¶ 4 ("IBN's low power television stations are not entitled to protection from DTV facilities").

Order, ¶ 4

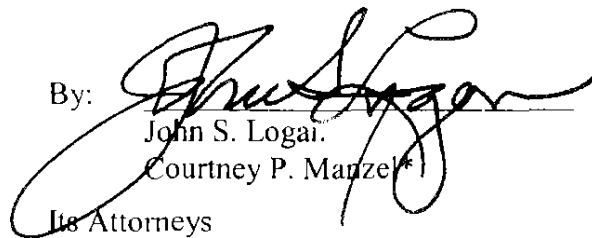
The relief IBN requests in its Petition is outside of Commission precedent and should be dismissed accordingly

WHEREFORE, for the foregoing reasons, IBN's petition for reconsideration must be denied

Respectfully submitted,

CIVCO, INC.

By:



John S. Logai.
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Its Attorneys

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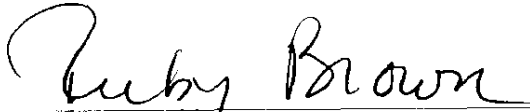
*Admitted in Virginia only; supervised by principals of the firm.

Dated: January 28, 2003

CERTIFICATE OF SERVICE

I, Ruby Brown, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 28th day of January 2003, the foregoing "OPPOSITION OF CIVCO, INC. TO PETITION FOR RECONSIDERATION OF ORDER DENYING STAY" was served via facsimile and first class mail to the following:

Paul J. Broyles
President
International Broadcasting Network
P.O. Box 691111
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Ruby Brown